

**HEARING AIDS—FITTING AND DISPENSING—
LICENSURE AND REGULATION****CHAPTER 774****S. B. No. 604**

An Act relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and its membership, terms, authority and duties, and qualifications and compensation of its members and its procedures and funds; providing for fees; and providing for the regulation of fitters and dispensers of hearing aid devices; amending Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566—1.01 et seq., Vernon's Texas Civil Statutes), by amending Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19; adding Sections 4A, 4B, 12A, and 12B and Subsection (e) to Section 14; and repealing Subdivision (7), Subsection (a), Section 15 and Sections 7 and 20.

Be it enacted by the Legislature of the State of Texas:

Section 1. Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566—1.01 et seq., Vernon's Texas Civil Statutes), are amended ²⁴ to read as follows:

"Section 1. Definitions

"In this Act, unless the context requires a different definition:

"(a) 'Board' means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

"(b) 'License' means license issued by the Board under this Act to a person authorized to fit and dispense hearing aids.

"(c) 'Temporary Training Permit' means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

"(d) 'Hearing aid' means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

"(e) 'Sell' or 'sale' includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term 'sell' or 'sale' shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

"(f) 'Fitting and Dispensing hearing aids' means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid.

"(g) '30-day trial period' means the period in which a person may cancel the purchase of a hearing aid.

"Sec. 2. Board of Examiners

"(a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is hereby created. The Board shall be composed of nine members appointed by the Governor with the advice and consent of the

²⁴. Vernon's Ann.Civ.St. arts. 4566—1.01
to 4566—1.03, 4566—1.06, 4566—1.09 to
4566—1.12, 4566—1.13, 4566—1.19.

Senate. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The Board members must have the following qualifications, to-wit:

"(1) Five of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such five members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

"(2) Two Board members must be members of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of health care; are not employed by and do not participate in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and do not own, control, or have, directly or indirectly, an interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment;

"(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

"(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.

"(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

"(c) In the event of death, resignation or removal of any members, the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board.

"(d) Members hold office for staggered terms of six years, and each member shall continue until a successor is appointed and qualifies.

"(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the state.

"(f) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252—9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

"(g) A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the hearing aid industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the regulated industry.

"(h) It is a ground for removal from the Board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the Board;

"(2) does not maintain during his service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board;

"(3) violates a prohibition established by Subsection (f) or (g) of this section; or

"(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.

"(i) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

"(j) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

"(k) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252—17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes).

"Sec. 3. Board organization and meetings

"Within 60 days after their appointment and qualification the initial Board shall hold its first meeting and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

"The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Special meetings of the Board shall be held upon request of a majority of the members or upon the call of the President. A majority of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days."

"Sec. 6. Examination: Application

"(a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

"(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of majority and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

"(c) The examination shall consist of written, oral or practical tests that shall be objective in method and applied in a consistent manner. The examination shall cover the following areas as they relate to the fitting and dispensing of hearing aids:

"(1) Basic physics of sound;

"(2) The structure and function of hearing aids;

"(3) Fitting of hearing aids;

"(4) Pure tone audiometry, including air conduction testing and bone conduction testing;

"(5) Live voice and/or record voice speech audiometry;

"(6) Masking when indicated;

"(7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;

"(8) Selection and adaption of hearing aids and testing of hearing aids; and

"(9) Taking of earmold impressions.

"(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

"(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. Upon reexamination, a person who has previously failed shall be examined only on those portions of the examination which he failed. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

"(f) The Board, in its discretion, may refuse to examine an applicant if he has been convicted of a felony or a misdemeanor that involved moral turpitude.

"(g) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination."

"Sec. 9. Temporary training permit

"(a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board.

"(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that

the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant.

"(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of one year or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

"(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

"(e) The Board shall establish educational guidelines, both formal and practical, for the training of temporary permit holders. The training guidelines shall include directions to the training supervisor about subject matter to be taught, length of the training period, extent of trainee contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training period.

"Sec. 10. Grounds for disciplinary actions

"The Board shall revoke or suspend a permit or license, place on probation a person whose permit or license has been suspended, or reprimand a permittee or licensee for any of the following violations:

"(1) The temporary trainee or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under this Act.

"(2) The temporary trainee or licensee is convicted of a felony or a misdemeanor which involves moral turpitude.

"(3) The temporary trainee or licensee is unable to fit and dispense hearing aids with reasonable skill and safety to customers by reason of incompetence, age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any condition causing the temporary trainee or licensee to become mentally or physically incapable as determined by a court of competent jurisdiction.

"(4) The temporary trainee or licensee has violated any of the provisions of this Act or Board rules.

"(5) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

"(6) The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

"(7) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

"(8) The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this subdivision be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

"(9) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, main-

tenance, or repair of a hearing aid when such representation was not true.

"(10) The licensee used the term 'doctor,' 'clinic' or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

"(11) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

"(12) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

"(13) The licensee falsely represented to a purchaser that a hearing aid was 'custom-made,' 'made to order,' 'prescription-made' or any other representations that such hearing aid was specially fabricated for the purchaser.

"(14) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

"(15) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

"Sec. 11. Disciplinary actions

"(a) If the Board proposes to refuse a person's application for examination, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

"(b) The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes).

"(c) Proceedings shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

"(d) The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.

"(e) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board and cross-examine opposing or adverse witnesses.

"(f) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

"(g) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

"(h) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

"(i) Appeal from the judgment of such district court will lie as other civil cases.

"(j) Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

"Sec. 12. Fees and expenses

"(a) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

"1. Temporary Training Permit	\$ 40
"2. Examination Fee	125
"3. License Fee	75
"4. License Renewal Fee	195
"5. Duplicate Document Fee	10

"(b) Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

"(c) The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the General Revenue Fund.

"(d) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

"(e) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

"(f) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

"(g) Funds for the administration of this Act shall be provided by the General Appropriations Act from the General Revenue Fund. The State Auditor shall audit the financial transactions of the Board each fiscal year.

"Sec. 13. Renewal of license

"(a) Each license to fit and dispense hearing aids shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on September 1 on payment of the renewal fee.

"(b) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

"(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

"(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

"(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

"(f) Before a license can be renewed, the Board shall require certification that all testing equipment, both portable and stationary, used by the licensee has been calibrated within one year prior to the renewal date.

"(g) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

"(h) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license."

"Sec. 19. Exceptions

"Nothing in this Act shall be construed to apply to the following:

"(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning, provided such persons or their employees do not sell hearing aids.

"(2) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

"(3) An individual with a master's or doctorate degree in audiology from an accredited college or university may engage in the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections and adaptations of or recommendations for a hearing aid, provided such persons do not sell hearing aids."

Sec. 2. Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566—1.01 et seq., Vernon's Texas Civil Stat-

utes), is amended by adding ²⁵ Sections 4A, 4B, 12A, and 12B to read as follows:

"Sec. 4A. Personnel policies

"(a) The President of the Board or his designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonentry level positions for at least 10 days before any public posting.

"(b) The President of the Board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.

"The Board may recognize, prepare, or carry out continuing education programs for its licensees. Participation in the programs is voluntary.

"Sec. 4B. Legislative review of rules

"If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements."

"Sec. 12A. Advertisements

"The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

"(1) restricts the person's use of any medium for advertising;

"(2) restricts the person's personal appearance or use of his voice in an advertisement;

"(3) relates to the size or duration of an advertisement by the person; or

"(4) restricts the person's advertisement under a trade name.

"Sec. 12B. Consumer information and complaints

"(a) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

"(b) Each written contract for services in this state of a licensed hearing aid fitter and dispenser shall contain the name, mailing address, and telephone number of the Board. There shall at all times be prominently displayed in the place of business of each licensee regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board.

"(c) The Board shall establish guidelines for a 30-day trial period on every hearing aid purchased from a licensed hearing aid fitter and dispenser.

"(d) The Board shall keep an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as fre-

25. Vernon's Ann.Civ.St. arts. 4566—1.04A,
4566—1.04B, 4566—1.12A, 4566—1.12B.

quently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation."

Sec. 3.²⁶ A rule adopted by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids before September 1, 1981, that conflicts with Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566—1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board/commission receives the committee's statements.

Sec. 4.²⁷ A person holding office as a member of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

Sec. 5. Sections 7 and 20, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566—1.01 et seq., Vernon's Texas Civil Statutes), are repealed.²⁸

Sec. 6. Subdivision 7, Subsection (a), Section 15, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended by Section 3, Chapter 796, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4566—1.15(a)(7), Vernon's Texas Civil Statutes), is repealed.²⁹

Sec. 7. Section 14, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566—1.14, Vernon's Texas Civil Statutes), is amended by adding ³⁰ Subsection (e) to read as follows:

"(e) Any individual licensed under this Act shall seek personally or through proper referral channels to obtain the following minimal information on each prospective candidate for amplification:

"(1) pertinent case history;

"(2) otoscopic inspection of the outer ear, including canal and drum-head;

"(3) evaluation of hearing acuity utilizing puretone techniques via air and bone conduction pathways through a calibrated system; and

"(4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of the language through speech audiometry, utilizing a calibrated system."

Sec. 8. (a) This Act takes effect September 1, 1981.

(b) ³¹ The requirements under Section 4A, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as added by this Act, that the president of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Section 4A that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983.

26. Vernon's Ann.Civ.St. arts. 4566—1.04 note, 4566—1.04B note.

27. Vernon's Ann.Civ.St. art. 4566—1.02 note.

28. Vernon's Ann.Civ.St. arts. 4566—1.07, 4566—1.20, repealed.

29. Vernon's Ann.Civ.St. art. 4566—1.15, subsec. (a), subd. 7, repealed.

30. Vernon's Ann.Civ.St. art. 4566—1.14, subsec. (e).

31. Vernon's Ann.Civ.St. art. 4566—1.04A note.

Sec. 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 6, 1981, by a viva-voce vote; Senate concurred in House amendments on May 27, 1981, by a viva-voce vote; passed the House, with amendments, on May 26, 1981, by a non-record vote.

Approved June 17, 1981.

Effective Sept. 1, 1981.

LICENSED PROFESSIONAL COUNSELOR ACT

CHAPTER 775 ³²

S. B. No. 606

An Act relating to regulation of professional counselors; creating the Texas State Board of Examiners of Professional Counselors and providing for its powers and duties; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

Short title

Section 1. This Act may be cited as the Licensed Professional Counselor Act.

Definitions

Sec. 2. In this Act:

(1) "Licensed professional counselor" means a person who represents himself to the public by any title or description of services incorporating the words "Licensed Counselor," who offers to render professional counseling services in private practice to individuals, groups, organizations, corporations, institutions, government agencies, or the general public for compensation, implying that he is licensed and trained, experienced, or expert in counseling, and who holds a valid license to engage in the private practice of counseling.

(2) "Board" means the Texas State Board of Examiners of Professional Counselors.

(3) "Department" means the Texas Department of Health.

(4) "Applicant" means an individual who seeks licensing under this Act.

(5) "Graduate semester hour" means a semester hour or the quarter hour equivalent as defined by regional accrediting educational associations when applied only to domestic training programs.

(6) "Counseling services" means those acts and behaviors coming within the meaning of the private practice of counseling.

(7) "Private practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public coun-

³². Vernon's Ann.Civ.St. art. 4512g, §§ 1 to 22.